

# Public Interest Disclosures Procedure



**Procedure no:** 01/2020  
**Approved by:** Executive Team  
**Date updated:** 15 June 2020

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## 1. BACKGROUND & OBJECTIVES:

### 1.1 Purpose

The RBGV is required to establish and publish procedures under section 58 of the *Public Interest Disclosures Act 2012* (Act) and ensure these procedures are readily available to members of the public as well as internally to all staff and Board members.

These procedures are a resource for disclosers and potential disclosers, whether an internal Board or staff member of the RBGV or a member of the public; essentially, any individual who wants to find out how the RBGV will manage their welfare if they make a disclosure. In addition, these procedures cover how the RBGV will protect other people connected to a public interest complaint from detrimental action being taken against them in reprisal for a discloser making a public interest disclosure. Such persons can include individuals who are the subject of public interest disclosures and public interest complaints; and others who are connected to public interest disclosures, such as witnesses or persons cooperating with an investigation into a public interest complaint.

These procedures form an essential part of RBGV's commitment to the aims and objectives of the Act. The RBGV does not tolerate improper conduct by the organisation, its employees, officers or Board members nor the taking of reprisals against those who come forward to disclose such conduct.

The RBGV recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal improper conduct or the taking of detrimental action in reprisal against persons who come forward to report such improper conduct.

The RBGV will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosures. It will also afford natural justice to the person or body who is the subject of the disclosures.

### 1.2 About the Act

The objective of the Act is to encourage and facilitate the making of disclosures of improper conduct and detrimental action by public officers and public bodies. It does so by providing certain protections for people who make a disclosure, or those who may suffer detrimental action in reprisal for making a disclosure. An essential component of this protection is to

ensure that information connected to a public interest disclosure, including the identity of a discloser and the contents of that disclosure, are kept strictly confidential. Public interest disclosures may be made about any of the public officers or bodies as defined in section 3 of the Act and section 6 of the IBAC Act. They include:

- government departments;
- statutory authorities;
- Councils established under the Local Government Act 1989;
- the Electoral Boundaries Commission;
- government-appointed boards and committees;
- government-owned companies;
- universities and TAFEs;
- public hospitals;
- a body performing a public function on behalf of the State, a public body or a public officer;
- state-funded residential care services;
- employees, staff and members of public bodies including those set out above;
- police and protected service officers;
- teachers;
- public servants;
- Board members;
- Members of Parliament, including Ministers;
- Judicial officers, including coroners, members of the Victorian Civil and Administrative Tribunal, associate judges and judicial officers;
- IBAC officers;
- statutory office holders, including the Auditor-General, the Ombudsman and the Director of Public Prosecutions;
- the Governor, Lieutenant-Governor or Administrator of the State;
- a Public Interest Monitor;
- a Victorian Inspectorate Officer; and
- the Victorian Inspectorate.

However, not all agencies may receive disclosures under the Act. Under the Act, the RBGV is not a body that may receive public interest disclosures. Therefore, **if you wish to make a disclosure about the RBGV, or one of our employees, officers, staff or Board members, you should make that disclosure directly to the IBAC.**

A public interest disclosure cannot be made about:

- the conduct or actions of a Court;
- the Office of the Special Investigations Monitor; or
- an investigations panel.

## 2. DEFINITIONS:

**Act** refers to the *Public Interest Disclosures Act 2012*

**Corrupt conduct** means any one of the following:

- conduct of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body;
- conduct of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body;
- conduct of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust;

- conduct of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or
- conduct of a person (the first person) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining:
  - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
  - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
  - a financial benefit or real or personal property; or
  - any other direct or indirect monetary or proprietary gain that they would not have otherwise obtained; or
- conduct that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above and that conduct could amount to an indictable offence, or one of the following three types of common law offences committed in Victoria:
  - perverting the course of justice;
  - attempting to pervert the course of justice; or
  - bribery of an official.

"Serious professional misconduct" is not defined in the Act. It may include conduct that constitutes a serious breach of an established professional code of conduct or other serious departure from the person's professional responsibilities. This may include a serious failure of skill required to perform the functions of the office as well as non-compliance with professional codes of conduct, policies, procedures and laws that govern behaviours in the public sector and in the workplace.

**Detrimental action** or **reprisal** means action taken against a person who has made a Public Interest Disclosures and includes action causing injury, loss or damage, intimidation or harassment and discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business. It includes the taking of disciplinary action.

In addition, a person can have taken detrimental action without having taken the action itself, but just by threatening to take such action. Further, the detrimental action need not necessarily have been taken (or threatened to be taken) against a person making a public interest disclosure, but against any person connected with a public interest disclosure.

**Discloser** is a person who (purports to) make(S) a complaint, allegation or disclosure (however described) under the Act.

**IBAC** is the Independent Broad-based Anti corruption Commission

**Improper conduct** is defined in the Act to mean:

Corrupt conduct; or conduct of a public officer or body that constitutes:

- a criminal offence;
- serious professional misconduct;
- dishonest performance of public functions;
- intentional or reckless breach of public trust;
- intentional or reckless misuse of information;
- substantial mismanagement of public resources;
- substantial risk to the health or safety of one or more persons; or
- substantial risk to the environment.

"Improper conduct" might also be the conduct of any person that:

- adversely affects the honest performance by a public officer or body of their functions; or
- is intended to adversely affect the effective performance by a public officer or body of their functions for the benefit of the other person (for example resulting in the other person obtaining a licence, permit or approval, appointment, financial benefit or other direct or indirect monetary or proprietary gain).

The conduct must be serious. Less serious or trivial conduct is excluded from the definition of "improper conduct".

**Protected discloser** is a person who makes a public interest disclosure

**Public Interest Disclosure (PID)** is a disclosure by a natural person of information that shows / tends to show or information that the person reasonably believes shows / tends to show improper conduct or detrimental action

**Public Interest Complaint (PIC)** is a public interest disclosure that has been determined by IBAC, the Victorian inspectorate or the Integrity and Oversight Committee (IOC) to be a Public Interest Complaint (previously a protected disclosure complaint).

### 3. OUTLINE & DETAIL OF PROCEDURE

#### 3.1 Internal Arrangements for Handling Welfare Management

The RBGV supports a workplace culture where the making of public interest disclosures is valued by the organisation and the right of any individual to make a public interest disclosure taken seriously.

The RBGV will:

- ensure these procedures are accessible on its website and available internally and externally to staff, Board members and any individual in the broader community;
- not tolerate the taking of detrimental action in reprisal against any person for making a public interest disclosure, including to take any reasonable steps to protect such persons from such action being taken against them;
- afford natural justice and treat fairly those who are the subject of allegations contained in disclosures;
- take the appropriate disciplinary and other action against any staff or Board members engaged in the taking of detrimental action;
- ensure that RBGV as a whole handles the welfare management of persons connected with public interest disclosure matters consistently and appropriately in accordance with its obligations under the Act, any regulations made under the Act, any guidelines issued by IBAC and these procedures; and
- be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of public interest disclosures.

#### 3.2 Staff and Board Members

Staff and Board members are encouraged to raise matters of concern in relation to the RBGV, including about any staff or Board member. In particular, staff and Board members are encouraged to report known or suspected incidences of improper conduct or

detrimental action in accordance with these procedures, whether such conduct or action has taken place, is suspected will take place, or is still occurring.

All staff and Board members of the RBGV have an important role to play in supporting those who have made a legitimate disclosure in accordance with the Act. All persons must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

### **3.3 Public Interest Disclosure Coordinator**

The RBGV's Public Interest Disclosure Coordinator has a central role in the way the organisation deals with all public interest disclosure matters, and in particular for ensuring that the welfare of any persons connected with a public interest disclosure is properly managed.

The Public Interest Disclosure Coordinator is:

- the contact point for general advice about the operation of the Act and for integrity agencies such as the IBAC;
- responsible for ensuring that the RBGV carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by the IBAC;
- RBGV's chief liaison with the IBAC in regard to the Act;
- to take all necessary steps to ensure information received or obtained in connection with a disclosure, including the identities of the discloser and the person(s) to whom the disclosure relate, are kept secured, private and confidential at all times;
- responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a welfare manager to support a person entitled to be protected and to protect him or her from any reprisals; and
- to collate statistics required to be reported by the RBGV in its annual reports under the Act.

The Public Interest Disclosure Coordinator appointed by the RBGV is:

Professor Tim Entwisle  
Director and Chief Executive  
Royal Botanic Gardens  
Birdwood Avenue  
Private Bag 2000  
SOUTH YARRA VIC 3141  
Ph: (03) 9252 2304  
[Tim.entwisle@rbg.vic.gov.au](mailto:Tim.entwisle@rbg.vic.gov.au)

### **3.4 Making a Disclosure**

#### **3.4.1 What is a disclosure and who can make one**

A disclosure may be made about two things under the Act:

- improper conduct of public bodies or public officers; and
- detrimental action taken by public bodies or public officers in reprisal against a person for the making of a public interest disclosure.

The term disclosure is interpreted under the Act in the ordinary sense of the word, for example, as a "revelation" to the person receiving it. The IBAC considers that a complaint or allegation that is already in the public domain will not normally be a public interest disclosure. Such material would, for example, include matters which have already been subject to media or other public commentary.

The conduct or action being disclosed about may be one which has taken place, is still occurring, or is believed is intended to be taken or engaged in. Disclosures may also be made about conduct that occurred prior to the commencement of the Act on 10 February 2013.

A disclosure may:

- only be made by a natural person (or a group of individuals making joint disclosures).<sup>1</sup> Disclosures cannot be made by a company or an organisation;
- be made anonymously;
- be made even where the discloser is unable to identify precisely the individual or the organisation to which the disclosure relates; and
- also be a complaint, notification or disclosure (however described) made under another law.

The following are **not public interest disclosures under the Act**:

- a disclosure made by a discloser who expressly states in writing, at the time of making the disclosure, that the disclosure is not a disclosure under the Act; and
- a disclosure made by an officer or employee of an investigative entity in the course of carrying out his or her duties or functions under the relevant legislation, unless the person expressly states in writing that the disclosure is a disclosure and the disclosure is otherwise made in accordance with Part 2 of the Act.

### 3.4.2 How can a disclosure be made?

Disclosures may be made anonymously, orally or in writing, and need not necessarily identify the person or organisation complained about.

Disclosures must be made in private.

Generally:

- a verbal disclosure may be made in person; by telephone; by leaving a voicemail message on a particular telephone answering machine; or by any other form of non-written electronic communication.
- The IBAC recommends that written disclosures to the IBAC be made via its online form available from <https://www.ibac.vic.gov.au/reporting-corruption/report/complaints-form> (last accessed 1 January 2020).

Disclosures cannot be made by fax.

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<sup>1</sup> It should be noted that some of the protections set out in the Act protecting a protected discloser are available only to the person who makes a disclosure. The IBAC has pointed out that the consequence of this is that if a person makes a disclosure by 'notifying' the agency on behalf of another individual, then it is the 'notifier' who may receive those protections, and not the person on whose behalf they have made the disclosure. The person on whose behalf the disclosure has been made will only be entitled to protections against detrimental taken against them in reprisal for the disclosure made by the notifier.

A disclosure made by email from an address from which the identity of the discloser cannot be ascertained will be treated as an anonymous disclosure.

A disclosure attempted or purported to be made to the RBGV will not be a disclosure made in accordance with Part 2 of the Act (and therefore not protected), because the RBGV is not permitted to receive disclosures. **If you wish to make a disclosure about the RBGV, please make that disclosure directly to the IBAC.** For further information about how to make a disclosure to the IBAC, see <https://www.ibac.vic.gov.au/reporting-corruption/how-to-make-a-complaint>.

### 3.4.3 What can a disclosure be made about?

A disclosure must be about the conduct of a person, public officer or public body in their capacity as a public body or public officer.

It must allege that the conduct is either improper conduct or detrimental action taken against a person in reprisal for a protected disclosure.

The information must show or tend to show that the improper conduct or detrimental action against a person has occurred, is occurring or is proposed to be engaged in by a person. Alternatively, the discloser must believe on reasonable grounds that the information shows or tends to show that the improper conduct or detrimental action against a person has occurred, is occurring or is proposed to be engaged in by a person.

Central to the notion of improper conduct is the notion of the "public trust".

There is an expectation that members of the community may rely on and trust their public bodies and officials to act honestly. The expectation is that public officers will not use their positions for personal advantage, or use the influence of their public office for improper purposes where there is a duty to act objectively and impartially.

Disclosers will need to identify that there is a link between the alleged improper conduct of a person or an organisation and their function as a public officer or a public body.

## 3.5 Assessment of a disclosure

Disclosures about the RBGV should only be made to IBAC. RBGV is a public body that cannot receive disclosures. If the RBGV receives a complaint, report, or allegation of improper conduct or detrimental action, the discloser will not be given the protections under the Act.

Once a disclosure has been notified to IBAC, they must determine whether it is a public interest complaint. Such a determination must be made within a reasonable time after the disclosure is notified.

If IBAC is of the view that the assessable disclosure is not a public interest disclosure, then it is not a 'public interest complaint'. If the IBAC is of the view that the assessable disclosure is a public interest disclosure, then it must determine that the public interest disclosure is a "public interest complaint".

### **3.5.1 If IBAC determines the disclosure is NOT a public interest complaint**

If IBAC determines the disclosure is not a public interest complaint, they must advise the discloser of this in writing and within a reasonable time after the determination is made, confirming that:

as a consequence of the determination:

- the disclosure will not be investigated as a public interest complaint; and
- the confidentiality provisions under Part 7 of the Act no longer apply in relation to the disclosure; and
- regardless of whether the IBAC has determined that the disclosure is a public interest complaint, the protections under Part 6 apply to a public interest disclosure.

In addition, if the IBAC is of the view that the disclosure, although not a public interest complaint, may be able to be dealt with by another entity, the IBAC may advise the discloser that:

- the matter which is the subject of the disclosure may be able to be dealt with by that entity other than as a public interest complaint; and
- if the discloser wishes to pursue the matter, make a complaint directly to that entity.

The IBAC is also able to consider whether it wishes to treat the assessable disclosure as a notification made to the IBAC under the IBAC Act.

### **3.5.2 If IBAC determines the disclosure IS a public interest complaint**

If IBAC determines a disclosure is a public interest complaint, it must then refer, investigate or dismiss the matter.

IBAC must advise the discloser of the determination and the action proposed to be taken. This includes advising the discloser whether IBAC has decided to dismiss, investigate or refer the public interest complaint. The only exception to this would be if IBAC considers that notifying the discloser or the entity that has referred the disclosure would have adverse consequences. These include putting a person's safety at risk, or prejudicing an investigation under the IBAC Act.

IBAC must also inform the discloser of their rights, protections and obligations under the ACT.

## **3.6 Welfare Management**

The RBGV is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of public interest disclosures.

The protection of persons making genuine public interest disclosures about improper conduct or detrimental action is essential for the effective implementation of the Act. In addition, the Act extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a public interest complaint ("co-operators"). Persons who are the subject of allegations will also have their welfare looked after.

The RBGV cannot receive disclosures, and therefore may not know that a person has made a public interest disclosure. Confidentiality obligations require a person who has made a public interest disclosure not to discuss the matter with any other person except

with the IBAC (or another investigative entity to which the IBAC may have referred the disclosure). Therefore, the RBGV will only be made aware that a person requires protection under the Act if that information has been provided to the RBGV by IBAC or the Victorian Inspectorate (when assessing whether a disclosure is a public interest complaint), or by the investigative entity investigating a public interest complaint.

Once the RBGV has been made aware of the identity of a discloser, and any other relevant information about a public interest disclosure, it will keep all information it receives confidential, and will manage the welfare of any relevant persons in accordance with its obligations under the Act.

The RBGV must, where it is aware of or has been provided the identities of disclosers and co-operators, ensure they are protected from direct and indirect detrimental action being taken against them in reprisal for the public interest disclosure.

The RBGV will ensure its workplace culture supports disclosers and co-operators. Such support will extend to the relevant persons regardless of whether they are internal to the organisation (e.g., employees, Board members, other officers) or external members of the public. However, different legislative responsibilities (including those external to the Act) apply to persons internal to the organisation, and to persons who may be clients or users of RBGV's services. These responsibilities derive from various legislative and administrative obligations to:

- ensure the health and wellbeing of employees of a public sector body under laws including those relating to occupational health and safety, the Charter of Human Rights and Responsibilities Act 2006 (Vic), the Public Administration Act 2004 (Vic), and various Victorian Public Sector Codes of Conduct (as relevant); and
- comply with various relevant laws, policies and practices when making administrative and other decisions or taking particular actions affecting a customer, client or user of RBGV's services.

Generally, for internal persons, the RBGV will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against these persons. For external persons, the RBGV will take reasonable steps to provide appropriate support. The RBGV will discuss reasonable expectations with all persons receiving welfare management in connection with a public interest disclosure.

### **3.6.1 Support available to disclosers and co-operators**

The RBGV will support disclosers and co-operators by:

- keeping them informed, by providing:
  - confirmation that the disclosure has been received, if the relevant investigative agency has provided this information to the RBGV;
  - the legislative or administrative protections available to the person;
  - a description of any action proposed to be taken;
  - if action has been taken by the RBGV, details about results of the action known to the RBGV;
- providing active support by:
  - acknowledging the person for having come forward;
  - assuring the discloser or co-operator that they have done the right thing, and the RBGV appreciates it;
  - making a clear offer of support;
  - assuring them that all reasonable steps will be taken to protect them;

- giving them an undertaking to keep them informed as far as the RBGV is reasonably able to;
- managing their expectations by undertaking an early discussion with them about:
  - what outcome they seek;
  - whether their expectations are realistic;
  - what the RBGV will be able to deliver;
- maintaining confidentiality by:
  - ensuring as far as is possible that other people cannot infer the identity of the discloser or co-operator;
  - reminding the discloser or co-operator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or co-operator;
  - ensuring that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures in the RBGV;
- proactively assessing the risk of detrimental action being taken in reprisal (rather than reactively waiting for a problem to arise and a complaint to be made by the discloser or co-operator), that is, actively monitor the workplace, anticipating problems and dealing with them before they develop as far as is possible;
- protecting the discloser or co-operator by:
  - examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment;
  - listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions;
  - assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the public interest disclosure;
- using best endeavours to prevent the spread of gossip and rumours about any investigation into the public interest disclosure where the RBGV is aware of any investigation being undertaken or about to be undertaken; and
- keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

### **3.6.2 Appointment of a Welfare Manager**

In appropriate circumstances, the RBGV will appoint a suitable welfare manager to protect a discloser or a co-operator.

In most circumstances, a welfare manager will only be required where a public interest complaint proceeds to investigation, but each public interest disclosure received by the RBGV will be assessed on its own merits. In particular, a welfare manager will be appointed where the RBGV believes that one is required to ensure that the appropriate support as set out in the Act can be provided to the discloser or cooperator.

The Welfare Manager is responsible for monitoring the needs of the discloser or co-operator and to provide advice and support. The Welfare Manager will:

- examine the immediate welfare and protection needs of the discloser or cooperator and, where that person is an employee, seek to foster a supportive work environment
- advise the discloser or cooperator of the legislative and administrative protections available to him or her
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making or cooperating with a disclosure
- keep a contemporaneous record of all aspects of the case management of the discloser or cooperator, including all contact and follow-up action, and
- endeavour to ensure that the expectations of the discloser or cooperator are realistic.

The RBGV may appoint a contractor to provide welfare services to a discloser or cooperator.

### **3.6.3 Persons who are the subject of public interest disclosures**

#### Welfare Management

The RBGV will also meet the welfare needs of a person who is the subject of a public interest disclosure. It is important to remember that until a public interest complaint is resolved, the information about the person is only an allegation.

The RBGV will make a decision about whether or when the subject of a disclosure will be informed about a public interest disclosure involving an allegation made against him or her. It is possible that the subject of the disclosure may never be told about the disclosure if it is not determined to be a public interest complaint, or if a decision is made to dismiss the disclosure. This may also depend on the stage at which the relevant investigative entity actually informs the RBGV of the identity of the subject of a disclosure.

The Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. The RBGV may give information about the disclosure to the subject of the disclosure if it is directed or authorised to do so by the investigative entity investigating the public interest complaint, or for the purpose of taking action with respect to the conduct alleged, including disciplinary action.

Investigative entities may also inform the subject of the public interest complaint in the course of their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.

A person the subject of a disclosure who is made aware of their status as such may have a welfare manager appointed by the RBGV, or be referred to RBGV's employee assistance program for welfare assistance. Alternatively, the Public Interest Disclosure Coordinator will provide support and advice to a person the subject of a disclosure, particularly in relation to their rights and obligations under the Act, these procedures, and any other relevant law or code of conduct. The RBGV will consider each matter on a case by case basis, taking into account the information it has been provided by the investigative entity and the person's particular circumstances.

### Confidentiality

The RBGV will take all reasonable steps to ensure the confidentiality of the subject of a disclosure at all times. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact that the investigation was undertaken, its results, and the identity of the person subject of the disclosure (to the extent that the RBGV has been provided that information by an investigative entity) will still be kept confidential by RBGV.

### Natural Justice

The RBGV will afford natural justice to the subject of a disclosure prior to any decision being made about the allegations. If the matter has been investigated by an investigative entity, then the investigative entity will be responsible for ensuring consultations with the subject include the provision of natural justice to him or her. The IBAC has noted that affording a subject of a disclosure natural justice in this context means that if a decision is to be made about their conduct this person has the right to:

- be informed about the substance of the allegations against them;
- be given the opportunity to answer the allegations before a final decision is made;
- be informed about the substance of any adverse comment that may be included in any report arising from an investigation; and
- have his or her defence set out fairly in any report.

### If the allegations are wrong or unsubstantiated

The RBGV will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are wrong or unsubstantiated. In those circumstances, the RBGV and any investigative entity involved will ensure that there are no adverse consequences for this person arising out of the disclosure or its investigation. This is particularly crucial in a situation where there has been publicly disclosed information identifying the subject, but also where such information has become well-known across RBGV and the subject is a staff or Board member of RBGV.

Further, if the matter has been publicly disclosed by the RBGV, the Director and Chief Executive will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated/for compensation/additional supported needs.

## **3.7 If Detrimental Action is Reported**

If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the welfare manager or Public Interest Disclosure Coordinator must record details of the incident and advise the person of their rights under the Act to make a disclosure to the IBAC.

A person takes detrimental action against another person in reprisal for a public interest disclosure if:

- the person takes, or threatens to take, detrimental action against the other person because, or in the belief that:
  - the other person or anyone else has made, or intends to make, the disclosure; or
  - the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or

- for either of the reasons above, the person incites or permits someone else to take or threaten to take detrimental action against the other person.

All persons are reminded it is a criminal offence to take detrimental action against another person in reprisal for a public interest disclosure under the Act. The penalty for committing such an offence in contravention of the Act is a maximum fine of 240 penalty units (\$39,652.80 from 1 January 2020, increasing 1 July every year in accordance with arrangements made under the Monetary Units Act 2004), two years' imprisonment or both.

In addition, the taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further disclosure with respect to that conduct. The disclosure of this allegation should be made to the IBAC as a new disclosure under Part 2 of the Act. Where the detrimental action is of a serious nature likely to amount to a criminal offence, the RBGV will also consider reporting the matter to the police or the IBAC.

A discloser of a public interest disclosure may also:

- take civil action against the person who took detrimental action against the discloser and seek damages;
- take civil action against RBGV jointly and severally to seek damages if the person who took detrimental action against the discloser took that action in the course of employment with, or while acting as an agent of the RBGV; and
- apply for an order or an injunction from the Supreme Court.

### **3.8 Protections for persons making a public interest disclosure**

#### **3.8.1 Protections available to disclosers**

Part 6 of the Act sets out the protections provided to persons who make a disclosure that is a 'public interest disclosure', i.e., one that is made in accordance with Part 2 of the Act. In summary, they are as follows:

- the discloser is not subject to any civil or criminal liability for making the public interest disclosure;
- the discloser is not subject to any administrative action (including disciplinary action) for making the public interest disclosure;
- by making the public interest disclosure, the discloser is not committing an offence against the Constitution Act 1975 or any other law that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- by making the public interest disclosure, the discloser is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality;
- the discloser cannot be held liable for defamation in relation to information included in a public interest disclosure made by him or her; and
- an award of costs cannot be made against the discloser unless the discloser's claim is vexatious or conducted unreasonably.

The protections in Part 6 apply from the time at which the disclosure is made by the discloser. They apply even if the IBAC has determined that the public interest disclosure is not a public interest complaint.

The protections also apply to further information relating to a public interest disclosure made by the original discloser, if the further information has been provided, verbally or in writing, to:

- the IBAC; or
- any investigative entity investigating the public interest disclosure.
- In circumstances where the principal officer (in RBGV's case, this is the Director and Chief Executive) makes a notification in good faith to IBAC under the mandatory notification directions, the relevant principal officer will be protected from any criminal or civil liability. This is the case even if the suspicion on which the report is based turns out to be untrue or unsubstantiated.

### Transfer of employees

An employee of a public service body or public entity who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them may request a transfer of employment.

After making a disclosure an employee can be transferred internally to another part of a public service body, or to another public service body or public entity on similar terms and conditions of employment. This can only happen if they request, or consent to, a transfer and the following other conditions apply:

- the head of the public body has reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee;
- the head of the public body considers that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- if transfer to another public body is proposed, the head of that public body consents to the transfer.

The transfer can be temporary or permanent, and if the employee is moved to another public body, the employee's service in the new body is regarded as continuous with their pre-transfer service.

### **3.8.2 Loss of protections caused by actions of the discloser**

A discloser is not protected if they commit an offence under section 72 or section 73 of Act, as follows:

- provide false or misleading information, or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure (maximum penalty: a fine of 120 penalty units (\$19,826.40 from 1 January 2020, increasing 1 July every year in accordance with arrangements made under the Monetary Units Act 2004), 12 months' imprisonment, or both);
- claim that a matter is the subject of a public interest disclosure knowing the claim to be false (maximum penalty: a fine of 120 penalty units, 12 months' imprisonment, or both);
- falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest complaint (maximum penalty: a fine of 120 penalty units, 12 months' imprisonment, or both).

### **3.8.3 Other limitations on protections afforded to disclosers**

A discloser is not protected against legitimate management action being taken by the RBGV in accordance with the Act.

In addition, although the discloser of a public interest disclosure is not subject to criminal or civil liability for making the disclosure, the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act. Therefore, the discloser will still be held liable for their own conduct that they disclose as part of making a public interest disclosure.

### **If the person making the disclosure is implicated in the improper conduct or detrimental action that is the subject of the disclosure**

Where a discloser is implicated in improper conduct, and an investigative entity has provided the necessary information to the RBGV, it will protect the discloser from reprisals in accordance with the Act, any guidelines issued by IBAC and these procedures. The RBGV acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure.

Taking disciplinary or other action against a person who has made a public interest disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. The Director and Chief Executive will make the final decision as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with. In all cases where disciplinary or other action is being contemplated, any such action will not be taken without the RBGV ensuring that:

- the fact that a person has made a public interest disclosure is not any part of the reason for the RBGV taking the action against the employee;
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances;
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The RBGV will take all reasonable steps to thoroughly document its decision-making process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not being taken in retribution against the discloser for making the disclosure, so that it will be able to clearly demonstrate that the disciplinary or other action was taken for the appropriate and permitted reasons under the Act.

The discloser will be clearly informed of any action proposed to be taken, be afforded natural justice, and inform and be informed of any mitigating factors that have been taken into account. Such communications with the discloser will be made in plain English and reasonable steps to provide appropriate support will be offered where appropriate.

### **3.9 Confidentiality**

The RBGV will take all reasonable steps to protect the identity of the discloser and the matters disclosed by a discloser. Maintaining confidentiality in relation to public interest disclosure matters is crucial, among other things, in ensuring detrimental actions are not taken in reprisal against a discloser.

The obligation of confidentiality extends to any person receiving a disclosure or making a disclosure. It is in the interest of the discloser to ensure he or she does not discuss any related matters other than with officers of the IBAC, another investigative entity, or other persons authorised by law.

The RBGV will ensure all files, whether paper or electronic, are kept securely. Those files will be accessible only by the Public Interest Disclosure Coordinator.

The welfare manager will not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosure Coordinator or an investigator appropriately authorised under the Act or the IBAC Act. All meetings between any relevant persons will be conducted discreetly to protect the confidentiality of the person making a public interest disclosure.

The Freedom of Information Act 1982 (FOI Act) provides a general right of access for any person to seek documents in the possession of the RBGV.

However, the Act provides that certain information related to public interest disclosures as contained in documents in the possession of the RBGV will be exempt from the application of the FOI Act.

Such information excluded from the operation of the FOI Act includes:

- any information relating to a disclosure made in accordance with the Act; and
- any information that is likely to lead to the identification of a discloser.

The RBGV is required to contact the IBAC prior to providing any document originating from the IBAC or relating to a public interest disclosure, if that document is sought under the FOI Act.

### **3.10 Staff Training**

The RBGV will:

- ensure that all staff and Board members have access to a copy of these procedures in hard or soft copy;
- incorporate into its induction procedures training about RBGV's general obligations under the Act and the rights and obligations of all staff and Board members;
- introduce periodic refresher courses for existing staff and Board members about their rights and obligations under the Act;
- provide additional training and assistance to:
  - any staff of the RBGV with specific responsibilities and functions to handle and manage public interest disclosures under the Act, including the Public Interest Disclosure Coordinator and people involved in welfare management; and
  - any staff with functions and duties under the FOI Act or with responsibilities for information management, to ensure that no prohibited information is disclosed under the Act and to ensure there is appropriate liaising with the staff of the IBAC or other investigative agencies where required in response to a request for access under the FOI Act.

### **3.13 Collating and Publishing Statistics**

The RBGV's annual report will include information about how to access this Procedure

## **4. CONTACT:**

Queries about this Procedure should be directed to the Manager People and Culture or RBGV's Public Interest Disclosure Co-ordinator, whose details appear in section 3.3 of this Procedure.

## **5. SCOPE OF PROCEDURE:**

This Procedure applies to all RBGV sites and all RBGV employees, executives, officers and Board Members. 'Employees' includes fixed term and permanent, casuals, volunteers, and contractors who provide services to or on behalf of the RBGV.

## **6. RELEVANT LEGISLATION/REGULATIONS/GUIDING PRINCIPLES:**

- *Public Interest Disclosure Act 2012 (Vic)*
- *Information Sheet – Key changes in relation to public interest disclosures*
- *Independent Broad-based Anti-corruption Commission Act 2011*

## **7. RELATED RBGV POLICY, PROCEDURES & SIMILAR DOCUMENTS:**

Public Interest Disclosure Policy

**8. RELATED FORMS:**

Not applicable.

**9. REVIEW DATE:**

This Procedure will be reviewed three years after the approval of ET to ensure it meets the objectives of the Act and accords with the IBAC guidelines, or sooner if further legislative changes require it.

**10. REVIEWING OFFICER:**

Manager People and Culture

**11. ACKNOWLEDGEMENTS:**

Sustainability Victoria

**12. REFERENCES:**

None

**13. APPENDICES:**

Not applicable.

**14. VERSION CONTROL**

Document Name	Version	Procedure Number	Effective Date
Protected Disclosure Procedure	1	04/2013	25 June 2013
Protected Disclosure Procedure	2	xx/2016	xx September 2016
<u>Public Interest Disclosure Procedure</u>	<u>3</u>		13 April 2021